APPENDIX C

Report of the Implementation Committee

Page 4, (iv) Visible Orders
The Proposed Trade-through Protection Rule would only apply to orders or parts of orders that are visible. In other words, the orders would have to be displayed by the marketplace and information about them would have to have been provided to an information processor or information vendor.

In addition, hidden orders or those parts of iceberg orders that are not visible would not be protected. Currently, the manner by which "dark" portions of orders in an otherwise transparent order book would be avoided is by using the "bypass" marker introduced by IIROC.12 The bypass marker signals to the marketplace that the order routed to the marketplace should not execute against any hidden liquidity.

Page 4, (b) "Permitted" Trade-throughs
The overall purpose of trade-through protection is to promote confidence and fairness in the marketplace where the visible portions of better-priced limit orders trade ahead of inferior-priced orders. It is important to acknowledge, however, that the issues relating to preventing all trade-throughs in a multiple marketplace environment have become highly complex, particularly with the advent of new types of orders and other developments in market structure in Canada.

As a result, we have proposed a number of circumstances where, if trade-throughs result, they would be permitted.13 These "permitted" trade-throughs or "exceptions" are primarily designed to achieve workable inter-market trade-through protection while facilitating the use of trading strategies and order types that are useful to investors. They are intended to promote fairness, innovation and competition.

Trade-though protection is an obligation owed by all marketplace participants to the market as a whole. It is important that marketplace participants create policies and procedures that will reasonably prevent trade-throughs and maintain relevant information so that the effectiveness of section 6.1 of NI 23-101 can be adequately evaluated by regulatory authorities.14   Although we are placing a policies and procedures obligation on marketplaces to reasonably prevent trade-throughs, in certain circumstances a marketplace would not be in violation of this obligation when trading through better-priced orders on other marketplaces. One such circumstance would be where the marketplace executes an order from a marketplace participant or other marketplace that notifies the receiving marketplace that it should not take any action other than to execute and/or book the order. By marking an order "immediately execute/book" the sender of the order is accepting the obligation for complying with trade-through requirements.

Page 5.Question 2: What length of time should be considered an "immediate" response by a marketplace to a received order?

(ii) Immediately Execute/Book Order

We are proposing an exception from the obligation on marketplaces to utilize their policies and procedures to reasonably prevent trade-throughs to allow the use of immediately execute and/or book orders. An order marked "immediately execute/book" (IEB) informs the receiving marketplace that it can execute the order and book the remainder or book the order, as applicable, without delay or regard to any other better-priced orders displayed by another marketplace.16   In such situations the receiving marketplace would not have an obligation to implement its policies and procedures to reasonably prevent trade-throughs, which could include routing, re-pricing or rejecting the order. Any order may be marked "immediately execute/book" by a marketplace or a marketplace participant. The concept allows for simultaneous routing by a participant of more than one IEB order to execute against protected orders in a number of different marketplaces. In addition, marketplace participants may send a single IEB order to execute against the best protected bid or best protected offer. When used in conjunction with the "Bypass" and immediate-or-cancel markers, an IEB order would enable participants to execute large block orders, provided that they simultaneously route one or more IEB orders to execute against all better-priced protected orders, facilitating that participant's compliance with the trade-through requirements. The IEB order may be used in conjunction with the bypass and immediate-or-cancel markers, depending on the sender's objectives.

Page 87 – Section 1.1 Definition - "immediately execute and/or book order" or "IEB" means an order for the purchase or sale of an exchange-traded security, other than a derivative,

    (a)   entered on or routed to a marketplace to be executed immediately with any remainder to be booked or to be immediately placed in an order book; and

(b) identified as an immediately execute and/or book order;

and at the same time it is entered or routed, one or more additional orders of sufficient volume are routed, as necessary, to a marketplace to execute against the displayed volume of any protected order on that marketplace with a better price to the orders referred to in paragraph (a), so long as a marketplace participant that has marked an order "immediately execute and/or book", has policies and procedures to reasonably prevent trade-throughs that include the use of such an order;

Page 90, 6.3 Immediately Execute And/Or Book Order Requirements – A marketplace or marketplace participant responsible for the routing of an order marked execute and/or book must ensure it has appropriate policies and procedures to reasonably prevent trade-throughs when using such orders.

Page 98, 2.4 Definition of Immediately Execute And/Or Book Order – An order marked immediately execute and/or book informs the receiving marketplace that it can be immediately executed or booked as a passive order without reference to better-priced orders displayed by other marketplaces. An IEB order is utilized by a marketplace or marketplace participant to notify the recipient marketplace that it should immediately execute and/or book the order and not implement the marketplace's policies and procedures to reasonably prevent trade-throughs.

Page 101, (3) – In certain circumstances, including in anticipation of utilizing an immediately execute and/or book order, a marketplace participant should create policies and procedures to reasonably prevent trade-throughs and should maintain relevant information to track routing decisions. For example, if a marketplace participant regularly uses an immediately execute and/or book order or has a process for routing orders if a marketplace experiences a systems failure, it should maintain policies and procedures outlining when it is appropriate to use that order type or outlining its routing choices, respectively as well as policies and procedures to reasonably prevent trade-throughs where an immediately execute and/or book order is utilized. If a marketplace participant regularly uses immediately execute and/or book orders or is sending an order to a marketplace that may be experiencing systems issues, it may also be appropriate for the marketplace participant to maintain relevant information so that compliance with Part 6 of NI 23-101 can be adequately evaluated by regulatory authorities.

Page 102 (b) Paragraph 6.2(b) of the Instrument contemplates that a marketplace would immediately execute or book any order identified as an immediately execute and/or book order. A marketplace that receives an immediately execute and/or book order would not need to delay its execution or take any action to reasonably prevent trade-throughs.